



**The Comptroller General
of the United States**

Washington, D.C. 20548

Benejam

Decision

Matter of: HTP Enterprises, Inc.

File: B-235200

Date: April 27, 1989

DIGEST

1. Where invitation for bids requires a bid bond, bidder's submission of bond in an insufficient penal amount renders the bid nonresponsive and defect may not be corrected after bid opening.
2. Bidder's objection to the agency's failure to verify and permit correction of an alleged clerical error in its bid is dismissed as academic where bid was found nonresponsive.
3. A nonresponsive bidder is not an interested party under General Accounting Office Bid Protest Regulations to protest cancellation of invitation for bids for which it was found nonresponsive.

DECISION

HTP Enterprises, Inc., protests the determination that its bid was nonresponsive to invitation for bids (IFB) No. DACA67-89-B-0009, issued by the United States Army Corps of Engineers (Corps), for a water tank. In addition, HTP objects to the agency's failure to verify and permit correction of an alleged apparent clerical error in its bid. HTP also alleges that the agency improperly canceled the IFB. We dismiss the protest without securing a report from the agency pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(i) (1988), since the facts establish that the protest has no legal merit.

The IFB required a bid bond to accompany the bid package. Five bids, including the protester's, were received by the Corps by the bid opening date of March 29, 1989. According to the protester, the bids received ranged from approximately \$3,199,000 to \$3,691,000, of which the protester's bid of \$3,407,780 was third highest, and the government estimate was \$2,919,937. HTP filed a protest with the

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contracting agency on April 3, seeking correction of an alleged misplaced decimal point made in the price of a line item in its bid. If correction were permitted, the protester's bid price would be reduced by \$441,000. It would therefore become the low bidder, displacing the two lower bidders, and its price would be only 1.6 percent above the government estimate. The protester states that on April 6, the contracting agency determined that the protester's bid was nonresponsive because its bid guarantee was insufficient in amount, and refused to consider as academic the requested correction of the alleged mistake in bid. The contracting agency subsequently canceled the IFB because all bids substantially exceeded the government's estimate. HTP then filed this protest with our Office.

The protester contends that due to a clerical mistake by its bonding company, the not-to-exceed or penal amount of the bond submitted with its bid was that intended for a different bid and as a result was insufficient in amount. The protester argues that since its bid was otherwise responsive, the agency improperly rejected its offer to correct the bond amount after bid opening. Citing our prior decision in E.C. Development, Inc., B-231523, Sept. 26, 1988, 88-2 CPD ¶ 285, the protester argued that since "the ability of an offeror to obtain adequate bonding is a matter of responsibility," not a matter of responsiveness, the agency wrongly concluded that its bid was nonresponsive.

A bid guarantee is a material part of a bid and when a bond is required, it must be furnished with the bid package. Baucom Janitorial Services, Inc., B-206353, Apr. 19, 1982, 82-1 CPD ¶ 356. The Federal Acquisition Regulation (FAR) requires the rejection of a bid that does not comply with the solicitation requirement of a bid guarantee. FAR § 14.404-2(i). Fort Steuben Enterprises, B-233746, Dec. 22, 1988, 88-2 CPD ¶ 621. Therefore, when a bidder supplies a defective bond, the bid itself is rendered defective and must be rejected as nonresponsive. Id. Furthermore, an offer to make the bid responsive by correcting the amount of the bond after bid opening could not be considered by the contracting agency. Truesdale Construction, Inc., B-213094, Nov. 18, 1983, 83-2 CPD ¶ 591.

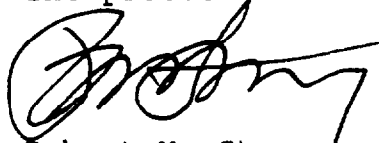
The protester's reliance on E.C. Development, Inc., B-231523, supra, is misplaced. Contrary to HTP's position, while the matter of the acceptability of an individual as a surety is a matter of bidder responsibility, we have held

that where the penal amount of a bid bond is insufficient, the bid is nonresponsive on its face. Fort Steuben Enterprises, B-233746, supra. The responsiveness of a bid must be determined as of the time of bid opening and generally from the face of the bid and the materials submitted with it. Handyman Exchange, Inc., B-224188, Jan. 7, 1987, 87-1 CPD ¶ 23. Further, a nonresponsive bid cannot be made responsive after bid opening. Daniel R. Hinkle, B-220163, Dec. 9, 1985, 85-2 CPD ¶ 639. Thus, the contracting agency properly concluded that HTP's bid was nonresponsive and that the bond could not be modified after bid opening to correct the defect.

The protester further argues that the contracting agency improperly failed to verify and permit correction of an alleged obvious misplacement of a decimal point, one example of a clerical mistake subject to correction by the contracting officer listed in FAR § 14.406-2(a)(1) (FAC 84-12). Tektronix, Inc., B-219981, Nov. 27, 1985, 85-2 CPD ¶ 611. We find this argument academic in light of our determination that HTP's bid was properly determined to be nonresponsive due to the insufficient bid bond. Therefore, even if the Corps had permitted the requested correction, HTP would not have been eligible for the award prior to the cancellation of the IFB.

Finally, HTP contends that the agency acted improperly by canceling the IFB because the bids received were "substantially over" the government estimate. HTP argues that the agency's action compromises the bidding process, since all of the bidders exposed their bids to their competitors at the bid opening. However, we find that HTP's bid was properly determined to be nonresponsive prior to the cancellation. Since the firm would not be eligible for award had the IFB not been canceled, it lacks the requisite direct economic interest necessary to be an "interested party" eligible to protest the cancellation. Sac & Fox Industries Ltd., B-231873, Sept. 15, 1988, 88-2 CPD ¶ 250; Trimarchi, Inc., B-231547.2, Oct. 14, 1988, 88-2 CPD ¶ 352; 4 C.F.R. § 21.0(a).

The protest is dismissed.



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